ORIGINAL

0000162082

Court S. Rich AZ Bar No. 021290
Rose Law Group pc
7144 E. Stetson Drive, Suite 300
Scottsdale, Arizona 85251
Direct: (480) 505-3937
Fax: (480) 505-3925
Attorney for The Alliance for Solar Choice

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

DOUG LITTLE
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF A NEW NET-METERING TARIFF FOR FUTURE NET METERED CUSTOMERS AND A PARTIAL WAIVER OF THE COMMISSION'S NET METERING RULES.	**DOCKET NO. E-01933A-15-0100** **INITIAL BRIEF OF THE ALLIANCE FOR SOLAR CHOICE (TASC).**

I. INTRODUCTION

In response to the *Application Of Tucson Electric Power Company ("TEP") For Approval Of A New Net-Metering Tariff For Future Net Metered Customers And A Partial Waiver Of The Commission's Net Metering Rules* (the "Application"), the Alliance for Solar Choice ("TASC") hereby files its Initial Brief. The Application <u>cannot</u> be heard outside a rate case. Further, even if it could be considered outside a rate case, it <u>should not</u> be.

As explained in Section II.A., the Application asks the Commission to raise utility revenue and rates outside of a rate case and without the exacting inquiry mandated under Arizona's Constitution. Section II.B. explains how the Arizona Constitution requires that this examination occur only in the context of a rate case. Moreover, as explained in Section II.C., in its last rate case, TEP was awarded a remedy that it and fifteen (15) Intervenors agreed adequately addressed the exact same issue it now complains of in the Application. It would be a breach of the Settlement Agreement and the Order resolving the rate case to permit TEP to re-litigate the same issue in a new and improper forum, and would result in a double recovery of costs that TASC disputes are even incurred by TEP.

As set out in Section II.D., TEP previously has admitted that there is no cost shift occurring from DG customers to non-DG customers, and should not be permitted to argue for the existence of a present cost shift that no ratemaking device permits to occur. In light of recent revelations that a full 70% of UNS Electric's residential customers are not covering their costs of service, Section II.E. sets out the reasons why the issue presented in the Application is one of global rate design that can only be adequately addressed in the context of a rate case. After all, if a strong majority of customers are actually causing the utility to under-earn, what rational basis can there be for addressing a mere 1-2% of the customer base that may or may not be responsible for any under-earning by the utility, while ignoring the remaining two-thirds with the same issue?

In Section II.F., TASC clarifies that TEP clearly seeks an end to net metering, not merely a modification to the Rule. Further, as set forth in Section II.G., TEP has not provided the studies required by Commission Rules that are necessary prerequisites to the Commission taking the action TEP requests. In Section II.H, TASC points to recent Commission precedent that indicates a rate case is the proper venue to resolve the issue the Application raises, and finally, in Section II.I., TASCs request that the Commission immediately revisit its recent UODG decision in light of TEP's anticipatory violation of the agreed-upon principle of cost parity.

II. ARGUMENT

A. TEP's Application Seeks A Rate And Revenue Increase Outside A Rate Case

In its Application, TEP seeks to increase the rates that its future distributed generation ("DG") solar customers will pay, thereby increasing the utility's revenue. TEP asks for permission to do all this outside a rate case. While TEP dances around the subject, referring to its Application as one that will "not increase TEP's revenues above the revenue requirement set forth in its most recent rate case, nor [ ] act to increase TEP's rate of return above the authorized rate of return,"[1] the fact is that TEP clearly is seeking a rate increase.

For example, TEP admits its proposal will "act to slow the cost shift and revenue degradation caused by TEP's current net metering tariff and rate design." That is an admission that TEP is seeking a rate increase. TEP asks the Commission to accept a logical impossibility: that TEP has found a way to modify the rates paid by a certain artificially created new sub-class of customers (all new DG customers), that such modification will permit the utility to "slow its revenue losses" from that sub-class of customers, and yet somehow that modification will not be a rate increase to those customers. In other words, TEP claims it has a revenue under-recovery problem; claims solar customers are the source of that problem; proposes changing the rates that all future solar customers will pay; claims that changing those solar customers' rates will reduce the under-recovery problem; and then refuses to call this change what it is: a rate increase.

TEP appears to argue that the Commission is free to raise rates on customers without constitutionally-required examinations, and between rate cases, so long as the rate increase does not raise the utility's revenue above the previously-approved revenue requirement or rate of return. By this logic, an under-earning utility could increase fees for new residential customers by just enough to leave the utility one dollar shy of exceeding its revenue requirement or rate of return. That is not, nor should it be, the law. Further, rate of return is a dynamic and not a static aspect of a utility's cost of service. Thus to the degree that any additional revenues are authorized in a regulatory proceeding to be collected in a future period, it is legally required that all aspects of the utility's cost of service be re-analyzed and reset at the time that such additional revenues are

[1] Application at 7:1-3.

granted.[2] To do otherwise would improperly mismatch components of a utility's cost of service and thereby ignore the current appropriate rate of return.

TEP cannot spin that it is asking the Commission to raise rates on all future solar customers without any reallocation of the additional revenue. This proposal is plainly not revenue-neutral (it could not solve TEP's alleged problem if it were) and therefore must be heard in a rate case.

B. TEP's Application Attempts Unconstitutional Single-Issue Ratemaking

In cases such as *Scates v. Arizona Corp. Commission*, Arizona courts have determined that "[w]hile the Corporation Commission has broad discretion in establishing rates, it is required by our Constitution to ascertain the value of a utility's property within the State in setting just and reasonable rates."[3] The goal is first to "determine the 'fair value' of a utility's property and use this value as the utility's rate base,"[4] and then to "determine what the rate of return should be, and then apply that figure to the rate base in order to establish just and reasonable tariffs."[5] It is precisely these careful considerations in which the Commission will be unable to engage without a rate case. It is precisely these determinations that TEP's Application seeks to unconstitutionally bypass.

Single-issue ratemaking occurs when utility rates or rate schedules are adjusted in response to a change in a single cost item considered in isolation. In *Scates*, Mountain States Telephone and Telegraph Company sought to increase rates for the installation, moving, and changing of telephones, without an examination of the company's other costs and revenues.[6] As the *Scates*

---

[2] *Scates v. Arizona Corp. Commission*, 578 P.2d 612, 615 (Ariz. Ct. App. 1978) (*citing* Ariz. Const. art. 15, § 14).
[3] Id.
[4] Id. at 615.
[5] Id.
[6] Id. at 614 ("The increase affected charges for all installation, moving and changing of telephones within the State of Arizona. It amounted to an annual rise in revenue to Mountain States of approximately 4.9 million dollars, representing about two percent of its entire annual revenue in the state.")

court recognized,[7] considering some costs in isolation might cause the Commission to allow a utility to increase rates to recover higher costs in one area without recognizing counterbalancing savings in another. Such single-issue ratemaking is unsound regulatory policy, and impermissible under law.

Despite Arizona courts' rejection of single-issue ratemaking, TEP is asking for exactly that. The Application seeks to eliminate net metering and serve all new solar customers under a newly-formulated tariff that will result in increased recovery for TEP from all new solar customers. TEP asks that this rate increase occur in isolation, outside of a rate case, and without the constitutionally-mandated examination into fair value and impact on its rate of return. TEP asks the Commission to approve the Application without considering the relevant costs and benefits through a test-year revenue requirement study, cost of service analysis, and rate design, as a general rate case would require, which means it is asking to do precisely what the *Scates* court forbade.

C. TEP Is Attempting To Re-litigate Its Recently Completed Rate Case, Which It May Only Do In A Future Rate Case

In its last rate case, TEP raised the issue of under-recovery allegedly caused by DG, and requested and was awarded a specific remedy to resolve that issue. Now, TEP is attempting to re-litigate that precise question, which violates both TEP's Settlement Agreement and the Commission's Order ending the rate case.

TEP filed its last rate case on July 2, 2012 in Docket No. E-01933A-12-0291 (the "Rate Case") and, on or about February 4, 2013, entered into a sixteen (16) party Settlement Agreement (the "Settlement Agreement") designed to resolve the issues raised in the Rate Case. The Commission entered Order 73912 on June 27, 2013, adopting the Settlement Agreement and

---

[7] Id. ("The Commission approved the increase without any examination of the costs of the utility apart from the affected services, without any determination of the utility's investment, and without any inquiry into the effect of this substantial increase upon Mountain States' rate of return on that investment.").

resolving the Rate Case. The Settlement Agreement and the Order both called for the creation of TEP's requested Lost Fixed Cost Recovery Mechanism (the "LFCR"). As explained below, the LFCR was created to resolve the exact same issue that TEP now complains of in its Application.

1. TEP Identified The Same Lost Revenues From DG As An Issue In Its Last Rate Case

TEP proposed the LFCR in the Rate Case to address issues of revenue under-recovery associated with DG and energy efficiency ("EE"), which is the same issue identified in the Application. As explained in Order 73912,

> *"TEP and Staff assert that the LFCR is needed because TEP's current rate structure is designed to recover the Company's authorized revenue requirement primarily through usage-based kwh sales. The volumetric rate charged for those sales is calculated based on the system-wide usage, based largely on the sales volumes experienced during the test year. However, as TEP notes, a majority of the costs included in TEP's revenue requirement do not vary with kwh sales, but are fixed. Thus, <u>under the current rate structure, when kwh sales decline as a result of EE/DSM programs and DG systems, TEP does not recover the fixed distribution and transmission costs that are embedded in its volumetric-based rates, and it does not have an opportunity to recover certain costs or achieve its Commission-authorized rate of return</u>."*[8]

Similarly, TEP CEO David G. Hutchens testified at the time of the Rate Case in support of the LFCR, arguing that "without a mechanism in place to capture and recover these lost revenues, TEP's rates are inadequate as they do not provide the Company with a reasonable opportunity to recover certain costs or achieve its Commission-authorized rate of return. The proposed LFCR

---

[8] Order 73912 at 39:12-20 (emphasis added).

mechanism would alleviate this inequity, while aligning the Company's financial well-being with the Commission's mandates and our customers' desire to participate in EE and DG programs."[9]

Today, TEP raises the exact same issue in its Application that it raised in the Rate Case – the precise problem that Hutchens testified would be alleviated by the LFCR. It is almost as though TEP cut and pasted from its argument in support of the LFCR when, in the Application, it wrote, "[u]nder the Company's current rate design, DG Customers do not pay for all of the fixed costs that TEP incurs to serve them because a large portion of those costs are recovered through volumetric kWh charges."[10]

Comparing the issue raised in the Rate Case with the issue raised in the Application shows that TEP is raising the exact same issue in the Application that it raised in the Rate Case:

Under-recovery problem described in *Rate Case*	**Under-recovery problem described in *Application***
"under the current rate structure, when kwh sales decline as a result of EE/DSM programs and DG systems, TEP does not recover the fixed distribution and transmission costs that are embedded in its volumetric-based rates, and it does not have an opportunity to recover certain costs or achieve its Commission-authorized rate of return."	"[u]nder the Company's current rate design, DG Customers do not pay for all of the fixed costs that TEP incurs to serve them because a large portion of those costs are recovered through volumetric kWh charges"

In fact, the only noticeable difference between the two descriptions of the issue is the final clause after the last comma in the Rate Case's description, wherein TEP rightly admits that there is no

[9] July 2, 2012 testimony of David G. Hutchens on behalf of TEP at 10:13-18 (emphasis added).
[10] Application at 5:3-5.

"cost shift" as the utility disingenuously claims today, but rather a revenue loss to the company. This issue is discussed in more detail in Section II.D.

2. TEP, Fifteen Intervenors, And The Commission Agreed That The LFCR Was The Solution For Lost Revenues Caused By DG

As explained in the preceding Section, the issue of under-recovery of revenue resulting from adoption of DG was a primary issue in the Rate Case. The sixteen signatories to the Settlement Agreement proposed that the LFCR be approved to "recover a portion of distribution and transmission costs associated with residential, commercial and industrial customers when sales levels are reduced by EE and DG,"[11] thereby resolving the lost revenue issue. The Commission agreed, and adopted Decision 73912 granting TEP and the Intervenors the desired LFCR mechanism. Moreover, Section 1.4 of the Settlement Agreement sets out specifically that the terms of the Settlement Agreement are "just, reasonable, fair, and in the public interest in that they, among other things [ ] <u>resolve the issues arising from this Docket</u>." [12]

And yet, despite this resolution of the under-recovery issue by the LFCR, TEP now raises that specter again in its Application.[13]

In the Application, TEP now argues that it wants to alter the agreed-upon solution from the Settlement Agreement. The LFCR was a major point resolved in the Settlement Agreement, which meant that the Rate Case was not litigated. Had TEP disclosed then what it claims now --that it apparently did not view the Settlement Agreement as actually resolving the under-recovery issue, nor did it intend to honor the provisions of Section 1.4 of the Settlement Agreement-- then litigation would certainly have ensued.

---

[11] Settlement Agreement at Section 8.3.

[12] Id. at Section 1.4 (emphasis added).

[13] In fact, TEP recognized that there could be multiple solutions to the identified issue but only chose to pursue the LFCR. In its Rate Case Application TEP wrote about the LFCR, "[t]he Company needs such a mechanism, <u>or a similar alternative mechanism (such as a full decoupling mechanism)</u>, to mitigate the negative financial impacts to the Company of complying with [ ] the REST rules." Rate Case Application at 8:16-24 (emphasis added).

In fact, as discussed in Section II.C.3, the issue of DG solar and alleged cost shifts was firmly before the Commission by the time a final Order was issued in the Rate Case. If TEP viewed the LFCR as an insufficient remedy for the issue it raised, then it had a duty to raise that belief at that time. Since it did not, it is bound by the terms of the Settlement Agreement, in which it agreed that the terms "resolve the issues arising from this docket."

3. TEP Had The Opportunity To Ask For The Relief It Now Seeks In Its Rate Case, Chose Not To, And Must Not Be Permitted To Seek This Relief Now, Outside A Rate Case

If TEP believed the LFCR – which, after all, TEP proposed -- was not actually resolving the exact issue it now raises in its Application, TEP had every opportunity to seek the relief it now wants in its Rate Case. The issue of the alleged "cost shift" was firmly placed before the Commission in November 2012, several months before TEP even commenced negotiations on its Settlement Agreement.[14] An APS-led technical conference proceeded all through the time that TEP was negotiating and finalizing its Settlement Agreement, and the discussion around this alleged cost shift was very public. Instead of speaking out against the Settlement Agreement, TEP led the Commission and all Intervenors to believe that TEP agreed that the LFCR fully and finally resolved this issue.

Further, the Settlement Agreement left open rate design for modification until July 1, 2014,[15] and still TEP did not seek in the Rate Case the rate design change it now seeks in the Application. Section 15.2 of the Settlement Agreement specifically stated that TEP was permitted, prior to July 1, 2014, to seek "the possible adjustment of specific tariffs to correct for unanticipated customer rate impacts that are determined to be inconsistent with the public interest." During the

---

[14] See APS's Comments to Staff's Recommended Opinion And Order in Docket No. E-01345A-12-0290 dated November 15, 2012.

[15] See, Settlement Agreement at Section 15.2.

time between the issuance of Order 73912 and July 1, 2014, the Commission resolved APS's DG docket with the imposition of a monthly per kW charge on solar customers, with robust debate. And yet TEP sat idly by and did not seek to have this issue dealt with in the Rate Case.

In addition, TEP was clearly aware of and watching this issue closely while it both failed to exercise its rights under Section 15.2 and failed to prepare another rate case to properly address this issue. All the way back on November 4, 2013, TEP filed Comments with the Commission where it urged the Commission "to act promptly [on APS's application] to avoid additional cost shifting from new DG installations,"[16] further arguing that "it would be irresponsible for the Commission to stand by and do nothing while an acknowledged problem imposes ever-increasing costs on a majority of utility customers."[17] TEP makes these seemingly urgent pleas to the Commission to resolve this issue just barely over four months from the date of the final Order in its Rate Case that adopted the Settlement Agreement where TEP agreed that it had resolved this issue.

In addition, despite its admonishment to the Commission that it would be "irresponsible for the Commission to stand by and do nothing," TEP itself failed to seek any additional rate design or tariff change as it was permitted to do until July 1, 2014. Further, TEP did not even bring the Application forward for upwards of a year and a half after it admonished the Commission about how irresponsible it would be to wait to act. Given this history, and everyone's reliance on TEP's past actions and inactions, TEP cannot now demand changes that it previously ignored or conceded had been addressed.

4. TEP's Newly Proposed Solar Mechanism Could Impact Commission-Approved ROE And Must Be Analyzed In A Rate Case

---

[16] Tucson Electric Power Company and UNS Electric, Inc., Comments to Staff Report and Proposed Order, November 4, 2013, Docket No. E-01345A-13-0248 at 2:11-13.
[17] Id. at 6:5-7.

During the Rate Case, participants repeatedly discussed and examined the impact that the LFCR mechanism would have on TEP's proposed return on equity ("ROE"). Additional revenue mitigation devices, such as those proposed in the Application, cannot be instituted now without re-evaluating these prior examinations. According to TEP's own ROE expert, mechanisms that lower the investment risk of a company relative to a proxy group of similar companies have a direct impact on the ROE.[18] TASC is unaware of any company in the country with a mechanism like that proposed in the Application. As a result, such a mechanism will undoubtedly lower the investment risk of those investing in TEP relative to other proxy groups, and will no doubt impact the Company's ROE. Yet, as a single issue case, TEP would deny all parties to this proceeding the opportunity to argue that its ROE should be reduced due to the lower risk the company will experience if its solar DG payment scheme is approved.

In fact, Staff's ROE expert suggested that further investigation of mechanisms like full decoupling "could lead to a host of contentious questions of how much and when to make adjustments to the return on equity."[19] In this instance, TEP is proposing something akin to full decoupling for DG customers, which would, according to TEP and Staff, be likely to impact the Company's ROE. This requires examination in a rate case to fully evaluate its impact.

5. TEP's Proposal Would Permit It To Double Dip By Recovering Alleged Lost Fixed Costs Through The LFCR And With New Charges On Solar Customers

TEP is asking to benefit from two remedies to the same problem, and to recover twice for the same deficit. As explained herein, TEP was awarded its requested LFCR remedy to, as TEP witness David Hutchens testified at the time, "alleviate [the] inequity" caused when TEP under-recovers from those customers who implement DG. In the Application, however, TEP seeks yet

[18] See, July 2, 2012, Testimony of John R. Reed at 36:12-14, ("the issue is not whether the Company's revenues would be less volatile with the LFCR than without it; rather the relevant question is whether the Company would be more or less risky with its LFCR as compared to the proxy group.").
[19] Decision 73912 at 41:4-6.

another remedy to this same problem, without explaining why it should be permitted to double-recover.

The LFCR permits the recovery of certain lost fixed costs incurred by the utility when its customers utilize DG. At the conclusion of a given year, the utility files a report calculating and seeking reimbursement for lost fixed costs in the method permitted and approved in the Settlement Agreement. Similarly, if granted, the Application would eliminate net metering and impose additional costs to solar customers. That means that TEP would receive additional payments for those same lost fixed costs. As a result, TEP would, in real time, be receiving more from each new solar customer, while being permitted at the year's end to turn around and seek reimbursement for any lost fixed costs resulting from that same customer. This is what is commonly referred to as a "double dip," and it is neither justifiable nor appropriate.

The LFCR rate and methodology was calculated and agreed upon in the Settlement Agreement prior to the existence of, and without regard to, the further remedy sought in the Application. But in turn, the existence of the remedy sought in the Application changes the need for and the rationale behind the LFCR. TEP cannot layer remedy upon remedy to the same problem without full and transparent analysis in the context of a rate case. Rather than approving TEP's attempt to achieve a second remedy to the same problem, the Commission should conduct a comprehensive review in a rate case.

D. There Is No Currently Growing Cost Shift – As TEP Admitted In Its Last Rate Case

TEP parrots the now familiar, yet entirely unsupportable, accusation that a real-time cost shift is occurring as a result of the implementation of DG solar, and that the costs that DG customers allegedly avoid are being shifted to non-DG customers. In a legally and factually spurious attempt to prompt this Commission to take immediate and unwarranted action outside a rate case, TEP falsely alleges that "DG systems added since TEP's last test year through the end of 2014 result in approximately $7 million in annual subsidies that <u>will ultimately be paid by</u> non DG customers."[20] But though TEP *claims* non-DG customers ultimately will pay this $7 million, it identifies no ratemaking mechanism or principle that would permit it to ever recover for lost kWh sales incurred between rate cases. In fact, TEP previously (and accurately) testified that, "[ ] all margin lost as the result of current EE and DG programs will be *<u>lost forever</u>* and the utility will be denied the opportunity to earn its authorized return due to the mandates of the Commission."[21] This is hugely important: during the Rate Case, when describing the issue it faces from DG solar, <u>TEP adamantly denied the existence of a "cost shift" and freely admitted that its concern is instead one of simple revenue loss</u>.

To reiterate: TEP admits that the revenue it loses when its customers adopt DG solar is "lost forever," and on which the utility is "denied the opportunity to earn its authorized return," and further admits that the revenue is <u>not</u> ultimately paid by non-DG customers through a cost shift. TEP cannot argue for revenue decoupling through the LFCR in its Rate Case, arguing it is needed to make TEP whole from permanent and unrecoverable revenue losses caused by DG, while turning around and arguing that these same revenues (the ones "lost forever") are also "ultimately be[ing] paid by non-DG customers." TEP went so far as to call the revenue loss resulting from DG adoption an example of "revenue confiscation," in testimony supporting its request for the LFCR.[22] Revenue forever confiscated is a far cry from revenue that is merely being recovered from a different source. TEP was either mistaken or misleading the Commission when it argued for the LFCR then, or it is mistaken or misleading the Commission now. TEP (and other Arizona utilities making the same scurrilous claims) cannot have it both ways.

TASC submits that it is clear that TEP was right when it offered testimony in support of its Rate Case pointing out that there is no cost shift, but rather, a revenue loss to TEP from DG. TEP

---

[20] Application at 6:1 (emphasis added).
[21] July 2, 2012 Testimony of Craig A. Jones, TEP Manager of Pricing, at 61:2-7.
[22] Id.

has not identified any mechanism that exists whereby any lost kWh sales incurred in the years between its rate cases will ever be shifted to any other customers. That reality is what makes it so absurd when TEP argues in the Application that lost fixed costs that are not recovered through the LFCR "will go unrecovered until future rate cases"[23] through some as-of-yet unidentified rate mechanism. TASC submits that TEP has not identified such a mechanism because, as TASC has argued on many occasions, no such mechanism exists.[24]

In the absence of a real, present, and growing cost shift, the Commission merely has before it an Application by a utility that got exactly what it asked for in its last rate case to deal with this issue, but now is unhappy with the remedy it selected. If TEP is suffering from revenue under-recovery it, like all other utilities, is free to come to the Commission seeking an examination in a rate case. TEP is not, however, free to try and mislead the Commission into raising rates on all new solar customers, thereby increasing TEP's revenues, without the exacting review of a rate case.

E. Rate Design Issues Like This One Can Only Be dealt With In A Rate Case

TEP suffers from an issue of rate design that can only be resolved in a rate case. Recent testimony filed in support of UNS Electric's rate case proves once and for all that self-serving utility complaints of a solar-caused "cost shift" are trivial (if true at all) when compared to actual, verifiable cost shifts in rates. UNS rate expert Dallas Dukes testified that "nearly 70% of residential bills do not cover the average fixed costs recovery established in [UNS's] current base rates."[25] Compounding the problem is that UNS has seen residential usage decline 8% on a use-per-customer basis.[26] This means that, in the present Application, TEP is asking the Commission

[23] Application at 5:17.
[24] As it has acknowledged in the past, TASC understands that the LFCR itself charges customers for some lost revenue resulting from implementation of DG and EE but TASC does not understand TEP to be directly arguing that the LFCR, the exact mechanism that TEP proposed to address the lost revenue issue, is in fact the source of the cost shift it is now complaining about. If TEP makes this argument, it merely reinforces that the issue raised in the Application must be dealt with in a rate case where the LFCR can be re-examined.
[25] Testimony of Dallas Dukes, May 5, 2015, Docket No. E-04204A-15-142 at 13:22-24
[26] See, Id. at 14:10-11.

to address, outside of a rate case, alleged under-recovery arising out of DG adoption by roughly 2% of its customers, while its sister company, UNS, is complaining of under-recovery from *two out of every three of its customers*. Even assuming that TEP is in better shape on per-customer under-recovery, the UNS admission suggests that TEP could easily be under-recovering from a majority of its customers.

What would be the justification for rushing to address an alleged under-recovery from a subset of 2% of the customer base, while ignoring that a supermajority of that same customer base is also causing under-recovery? TASC submits that the reason is the utilities' desire to stop their customers from utilizing rooftop solar that is not owned by the utilities. That said, it is not necessary for the Commission to determine why a utility would ask that the Commission urgently act to remedy a small under-recovery problem while ignoring a vastly larger one. The Commission need only recognize that the utilities are alleging systemic rate design issues that can only be adequately addressed in a rate case.

F. TEP Mischaracterizes Its Proposal And Fails To Acknowledge It Is Asking To Eliminate Net Metering

The Commission's Net Metering Rules provide for a credit for exported power at the retail rate. That is the essence of net metering – a one for one credit for exported power. TEP's proposal eliminates net metering and replaces it with a constantly-resetting buyback rate for exported power. Though TEP seeks a "waiver" of the Rules, it has not even set forth which particular Rule(s) it seeks to waive. TASC submits that no Rule is specified because TEP knows that it is asking not for a true waiver, but to rewrite the Rule to change its intent and its implementation. TEP is attempting to change the definition of net metering, make the purchase rate of exported power subject to constant adjustment and uncertainty, and alter the method of payment for excess power, all in one application.

This major departure from the Rules must be given proper review in a rate case.

G. Cost of Service Or Cost Benefit Studies Must Be Required

R14-2-2305 provides that new charges that "increase a Net Metering Customer's costs" must be supported by cost of service studies or cost-benefit analyses. Any proposal, such as TEP's, that completely eliminates net metering should, at a minimum, be required to comply with regulatory requirements for imposing a new or additional charge on net metering customers. Allowing utilities to propose eliminating net metering or otherwise to alter the buyback rate for exported energy to circumvent the safeguards of R14-2-2305 would be unfair. Lowering the buyback rate has the exact same impact as the imposition of a comparable affirmative charge on solar customers. The Commission should not permit the creation of such a loophole and must require cost-benefit studies to be performed. These studies should be performed in the context of a rate case.

H. Precedent Supports That A Rate Case Is The Proper Venue For This Examination

At its Staff Meeting on April 13, 2015, the Commission addressed a near-identical issue, ruling in favor of an adjudication in a rate case. The Commission was faced with the question of whether to uphold Decision 74871, hold a hearing outside a rate case on the issues presented therein, or put the decision on hold pending review in the next APS rate case. The Commission's own attorney told the Commission, "[a] rate case is the ideal way for setting rates [and] that's the way I think the courts might also view the issues presented here."[27] It was clear from the Commission's discussion, and the Commission's attorney agreed, that the Commission would have more tools at its disposal for investigating and solving issues inside a rate case.[28]

---

[27] See http://azcc.granicus.com/MediaPlayer.php?view_id=3&clip_id=1909 at 1:10:04.
[28] Id.

For example, outside of a rate case, the Commission is powerless to address rate design issues in a broad context by reallocating costs across different classes. Nor could it create a new rate or multiple rate tariffs to address any concerns it might have. Perhaps most importantly, outside of a rate case the Commission simply will not have all the relevant information, including cost of service studies, test year revenue requirement, and a full cost benefit analysis, which is necessary to fully examine the issues presented in the Application.

TEP is proposing to box the Commission into a narrow potential solution, focused on a single characteristic of a small sub-class of customers, in response to an alleged problem – one that, if real and verifiable, is likely caused by the very nature of rates themselves and evident in a majority of customers' bills, and not by a narrow sub-class of customers who generate a portion of their own power. The Commission should deal with this issue in a forum that allows it to truly consider and implement any and all options it deems appropriate. The only forum that permits that process is a general rate case.

Further, in explaining its position while deciding to send Decision 74871 to a rate case, the Commission recognized that judicial economy dictates having the issue tried once in a rate case, rather than twice. All the issues that led to the Commission making its decision in that matter are also present in this docket. If the Commission sends this matter to a rate case, the Commission will avoid wasting taxpayer and ratepayer money adjudicating the same issue again when TEP comes in for its next rate case.

I. TEP's Application Requires Revisiting Its Required Cost Parity Commitments In Decision 74884 (UODG Program) And Exposes Impropriety Of UODG

Finally, TASC suggests that the Application should trigger a review of the Commission's recent Decision 74884, which permitted TEP to participate in the residential rooftop solar market.

That review should occur immediately prior to TEP spending any additional funds on the utility-owned DG program. Of note, that Decision set forth that "TEP commits to cost parity with current net metering rates" and further committed to updating its project costs to retain cost parity should rate design alter the amount of the alleged cost shift.[29] Indeed, promises of cost parity were a key factor underlying the apparent tacit approval of that program. TEP should be made to demonstrate cost parity is possible in light of its Application. Indeed, TEP committed to work to "minimize cost parity issues between [TEP DG customers and other solar customers]."[30] If TEP cannot demonstrate cost parity is possible, the Commission should reopen Decision 74884 under the provisions of A.R.S. 40-252, and make it clear that TEP is directed not to proceed with its proposed UODG program.

Additionally, if under recovery from solar customers is the heart of TEP's argument, Decision 74884 should be revisited as the rate itself creates, a flat tariff that removes volumetric rates entirely for distributed solar customers when installed and owned by TEP. This flat fee by design necessarily results in under or over recovery as it is extremely unlikely that a customer or group of customers paying entirely fixed rates use precisely the same number of kWh that it would take to exactly match the flat rate in revenue. Without thorough examination of this rate, TEP may likely be creating the exact same problem that it wishes to address here though only for customers who chose to install rooftop solar and own or lease those systems rather than have TEP own them.

Further, TASC wishes to note that the Application itself is evidence why utilities should not be permitted to compete under their regulated arm with private competitive businesses. Just months after having its UODG program approved, TEP is asking this Commission to make laws designed to render TEP's new rooftop solar products comparatively more attractive than those offered in the private, competitive sector. For this reason alone, the Commission should revisit its earlier decision and order TEP to enter the rooftop solar market through an unregulated affiliate,

---

[29] Decision 74884 at para. 73.
[30] Id.

if at all. Perverse incentives for regulated utilities to attack private industry and raise the price of competitively offered products should not be built into a regulatory framework.

III. Conclusion

The Application asks the Commission to raise utility revenue and rates outside of a rate case and without the exacting inquiry mandated under Arizona's Constitution. Further, in its last rate case, TEP was awarded a remedy that TEP, the Commission, and fifteen other Intervenors agreed adequately addressed the exact same issue TEP now complains of in the Application. It would be a breach of the Settlement Agreement and the Order resolving the Rate Case to permit TEP to re-litigate the same issue in a new and improper forum. In addition, TEP is seeking double recovery of costs that TASC disputes are even incurred by TEP.

TEP previously has admitted that there is no cost shift occurring from DG customers to non-DG customers, and should not be permitted to argue for the existence of a present cost shift that no ratemaking device permits to occur. In light of recent revelations that a full 70% of UNS Electric's residential customers are not covering their costs of service it is clear that the issue presented is one of global rate design that can only be adequately addressed in the context of a rate case.

In addition, TASC clarifies above that TEP clearly seeks an end to net metering, not merely a modification to the Rule. TEP's Application is also deficient because it has not provided the studies required by Commission Rules that are necessary prerequisites to the Commission taking the action TEP requests. Recent Commission precedent also indicates a rate case is the proper venue to resolve the issue the Application raises. Finally, TASCs request that the Commission immediately revisit its recent UODG decision in light of TEP's anticipatory violation of the agreed-upon principle of cost parity.

For the forgoing reasons TASC respectfully requests that the Commission enter an Order dismissing the Application and directing TEP to revisit the issue in its next general rate case.

Respectfully submitted this 15th day of May, 2015.

Court S. Rich
Rose Law Group pc
Attorney for TASC

Original and 13 copies filed on this 15th day of May, 2015 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Copy of the foregoing sent by electronic and regular mail to:

Janice Alward
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Steve Olea
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Dwight Nodes
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Michael Patten
Snell & Wilmer L.L.P.
One Arizona Center
400 E. Van Buren Street, Suite 1900
Phoenix, Arizona 85004

Bradley Carroll
88 E. Broadway Blvd. MS HQE910
P.O. Box 711
Tucson, Arizona 85701

Chiyere Osuala
Earthjustice Washington, DC Office
1625 Massachusetts Ave., NW, Suite 702
Washington, D.C. 20036

Jill Tauber
Earthjustice Washington, DC Office
1625 Massachusetts Ave., NW, Suite 702
Washington, D.C. 20036

Daniel Pozefsky
RUCO
1110 W. Washington Street, Suite 220
Phoenix, Arizona 85007

Mark Holohan
Arizona Solar Enegry Industries Association
2221 W. Lone Cactus Drive, Suite 2
Phoenix, Arizona 85027

Rick Gilliam
1120 Pearl Street, Suite 200
Boulder, Colorado 80302

Kevin Koch
P.O. Box 42103
Tucson, Arizona 85733

Timothy Hogan
202 E. McDowell Road, #153
Phoenix, Arizona 85004

COASH & COASH
1802 N. 7th Street
Phoenix, Arizona 85006

Garry Hays
1702 E. Highland Avenue, Suite 204
Phoenix, Arizona 85016

By: ____________________